

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 16, 2004**

**IN RE:**

**ALLEGED VIOLATIONS OF TENN. CODE ANN.  
§ 65-4-125(b) AND RULES OF TENNESSEE  
REGULATORY AUTHORITY, CHAPTER  
1220-4-2-.58, BY AT&T COMMUNICATIONS  
OF THE SOUTH CENTRAL STATES, LLC**

**DOCKET NO.  
04-00172**

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**ORDER APPROVING SETTLEMENT AGREEMENT**

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This matter came before Director Pat Miller, Director Sara Kyle, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on June 21, 2004, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and AT&T Communications of the South Central States, LLC ("AT&T" or "the Company") related to alleged violations of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Regs. 1220-4-2-.58. The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Regs. 1220-4-2-.58 prohibit a telecommunications service provider from committing a practice referred to as "cramming" by billing and collecting charges for services to which the provider knows or reasonably should have known that a person has not subscribed. Tenn. Code Ann. § 65-4-125(f) authorizes the TRA to assess a civil penalty for "cramming" violations of not less than \$100 nor more than \$1,000 for each day of such violation.<sup>1</sup>

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<sup>1</sup> The Settlement Agreement incorrectly referred to this statute as Tenn. Code Ann. § 65-4-405(f) in the third paragraph on page 2. The panel approved the Settlement Agreement after the parties indicated they would file an erratum. An amendment was filed by the parties on July 12, 2004 and is attached as Exhibit B. Director Jones commented that, in his opinion, Tenn. Code Ann. § 65-4-125(f) was inapplicable because the Company did not admit to being in violation of the "cramming" statute.

The CSD received several complaints involving the erroneous imposition of a monthly recurring charge ("MRC") added to the residential telephone bills of customers. Due to processing errors, AT&T billed the MRC to approximately 39,000 Tennessee consumers who were not its customers. The CSD received the first consumer complaint regarding these billing errors on February 5, 2004. Soon thereafter, CSD began an investigation and contacted representatives of AT&T to discuss these complaints. During ensuing conversations and at subsequent meetings, AT&T provided CSD with information concerning the nature and scope of the processing errors.

CSD relied upon the factors stated in Tenn. Code Ann. § 65-4-116(b) during the negotiations that resulted in this agreement, including the Company's size, financial status, good faith and the gravity of the violations. Ultimately, the CSD and AT&T agreed to a settlement in the amount of \$177,000 in remediation of these alleged statutory violations. In addition, the settlement required AT&T to issue a letter of apology and to make a complete refund or bill adjustment to those customers erroneously billed the MRC. The CSD represented that this settlement advances a fair and reasonable resolution of the staff investigation.

#### **The June 21, 2004 Authority Conference**

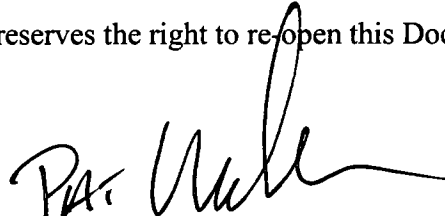
At the June 21, 2004 Authority Conference, Ms. Martha Ross-Bain of AT&T participated on behalf of the Company and affirmed its consent to the terms of the Settlement Agreement. Dr. Eddie Roberson, Chief of the CSD, summarized the Agreement. The panel voted unanimously to approve the Settlement Agreement.

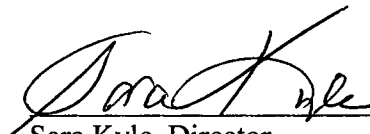
#### **IT IS THEREFORE ORDERED THAT:**

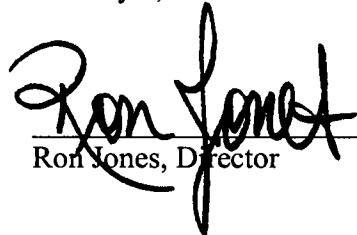
1 The Settlement Agreement, attached hereto as Exhibit A and as modified in attached Exhibit B, is accepted and approved and is incorporated into this Order as if fully rewritten herein.

2. AT&T shall pay \$177,000 in full settlement of these complaints, remitted to the Office of the Chairman of the TRA no later than thirty days following approval of the Settlement Agreement by the TRA Directors.<sup>2</sup>

3. Upon payment of the amount of \$177,000 and compliance with the terms of the Settlement Agreement attached hereto, AT&T is excused from further proceedings in this matter, provided that, in the event of any failure on the part of AT&T to comply with the terms and conditions of the Settlement Agreement, the TRA reserves the right to re-open this Docket

  
Pat Miller, Director

  
Sara Kyle, Director

  
Ron Jones, Director

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<sup>2</sup> The TRA received a payment of \$177,000.00 from AT&T Communication of the South Central States, LLC on July 22, 2004

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**IN RE:**

**ALLEGED VIOLATIONS OF  
TENN. CODE ANN. §65-4-125(b) AND  
RULES OF TENNESSEE REGULATORY  
AUTHORITY, CHAPTER 1220-4-2-.58,  
BY:**

**AT&T COMMUNICATIONS OF THE  
SOUTH CENTRAL STATES, LLC**

**DOCKET NO. 04-00172**

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**SETTLEMENT AGREEMENT**

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This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and AT&T Communications of the South Central States, LLC ("AT&T" or "the Company") and is subject to the approval of the Directors of the TRA.

From February 5, 2004 until the present, the CSD has received a number of consumer complaints against AT&T. Many of these complaints involve the erroneous imposition of a monthly recurring charge ("MRC") and allege a potential violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Regs. 1220-4-2-.58, commonly referred to as "cramming" violations. Pursuant to Tenn. Code Ann. § 65-4-125(b), a telecommunications service provider commits a "cramming" violation by billing and collecting charges for services to which the provider knows or reasonably should have known that a person has not subscribed.

The MRC was added to the residential telephone bills of customers who were assigned to AT&T's Basic Rate Plan as of January 1, 2004. Prior to implementing the MRC, AT&T filed a tariff with the Federal Communications Commission, a service guide pursuant to its AT&T Consumer Services Agreement, posted advance notice of the MRC on its website, and sent written notice to all affected customers.

Due to processing errors, AT&T erroneously billed the MRC charge to approximately 40,000 Tennessee consumers. The TRA received the first consumer complaint regarding these billing errors on February 5, 2004. Soon thereafter, CSD began an investigation and contacted representatives of AT&T to discuss these complaints. During ensuing conversations and at subsequent meetings, AT&T provided CSD with information concerning the nature and scope of the processing errors.

Tenn. Code Ann. § 65-4-405(f) authorizes the TRA to assess a civil penalty for a violation of the "cramming" statute of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day of any violation. CSD relied upon the factors stated in Tenn. Code Ann. § 65-4-116(b) during the negotiations that resulted in this agreement, including the Company's size, financial status, good faith and the gravity of the violations.

In an effort to resolve all of the complaints referenced above on an expeditious basis, CSD and AT&T agree to settle this matter based upon the following acknowledgements and terms subject to approval by the Directors of the TRA:

1. AT&T neither admits nor denies that the above referenced complaints are true and valid complaints or that their actions are in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Regs. 1220-4-2-.58.
2. AT&T agrees to a settlement payment of one hundred and seventy seven thousand dollars (\$177,000) for these complaints as authorized by Tenn. Code Ann. § 65-4-125(f), and agrees to remit the amount of one hundred seventy seven thousand dollars (\$177,000) to

the Office of the Chairman of the TRA no later than thirty (30) days following the approval of this Settlement Agreement by the TRA Directors.<sup>1</sup>

3. AT&T estimates that it has erroneously billed the MRC to approximately 40,000 Tennessee consumers. This Settlement Agreement resolves all issues and complaints, whenever filed, regarding those approximately 40,000 erroneously billed customers. It also resolves all other complaints, including those not involving the MRC, on file at the TRA as of June 7, 2004.
4. AT&T acknowledges it has sent or is in the process of sending letters of apology to Tennessee consumers who have been erroneously billed the MRC.
5. AT&T has made or will make full refunds of the MRC to every person in Tennessee who was erroneously billed the MRC. The refunds are made or will be made either by sending the consumer a check or giving the consumer a credit on his or her telephone bill. Except as noted in paragraph 9, all refunds will be accomplished in full by September 30, 2004.
6. On or before June 30, 2004, AT&T's internal records will reflect and AT&T will have implemented billing systems corrections that should result in billing records corrections for all of the approximately 40,000 Tennessee customers known, as of June 7, 2004, to have been incorrectly billed the MRC. Adjustments to the bills of these consumers will be reflected in refunds or in credits on the consumer's bills by September 30, 2004. Except as noted in paragraph 9, after June 30, 2004, no consumer should be erroneously billed the MRC for the first time
7. Based on the approximation described in paragraph 3, AT&T estimates that it has made or will have made by September 30, 2004 total bill adjustments to Tennessee consumers of approximately \$224,747.00.

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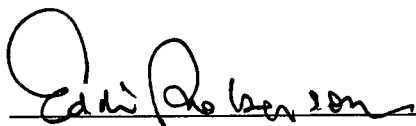
<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing TRA Docket No. 04-00172

8. By November 1, 2004, AT&T agrees to file a report with the TRA verifying that all of the approximately 40,000 Tennessee consumers who were erroneously billed the MRC have received either a complete refund or a bill adjustment. Such report shall include the total number of consumers receiving the refund or adjustment and the total dollar amount of the refunds or adjustments.
9. AT&T is presently conducting a complete review of all Basic Rate Plan customer files and billing records and comparing that information with BellSouth's CARE records. This reconciliation process may identify other individuals in Tennessee, in addition to those identified in paragraph 3 above, who have been, or are being, erroneously billed the MRC. If such other individuals are identified as a result of the reconciliation process, AT&T will discontinue billing any such person, give a complete refund or credit of the MRC, and provide the person a letter of explanation and apology. AT&T estimates that it will complete this reconciliation process within three months of its receipt of BellSouth's CARE records. AT&T will inform the CSD upon its receipt of these records. The CSD and AT&T both acknowledge that compliance with this deadline depends upon AT&T being able to promptly obtain accurate data and cooperation from BellSouth. Within 30 days of completing this process, AT&T will file a report with the TRA verifying that all of the customers who were identified by the reconciliation process and were erroneously billed the MRC have received either a complete refund or a bill adjustment. Such report shall include the total number of consumers receiving the refund or adjustment and the total dollar amount of the refunds or adjustments. This Settlement Agreement also resolves all issues and complaints regarding MRC billing errors that may arise during, or as a result of, this reconciliation process.

10. AT&T agrees to comply with all the statutory and regulatory requirements of the TRA.
11. In the event that AT&T merges or consolidates with or transfers its assets to another firm, corporation or entity, AT&T or its successor shall remain responsible for fully complying with the terms and conditions of the Settlement Agreement. AT&T shall so notify the CSD no later than ten (10) days prior to the completion of such transaction.
12. AT&T agrees that a company representative will attend in person the Authority Conference during which the Directors consider this Settlement Agreement.
13. Compliance with all terms and conditions of this Settlement Agreement by AT&T shall be deemed a full release, accord and satisfaction of all liability for the aforementioned outstanding issues and AT&T shall be excused from further proceedings in this matter.
14. In the event that AT&T fails to comply with the terms and conditions of this Settlement Agreement, the TRA reserves the right to re-open this docket. AT&T shall pay any and all costs incurred by the TRA to enforce the Settlement Agreement.
15. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement that are not fully expressed herein or attached hereto.
16. If any clause, provision or section of this Settlement Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or

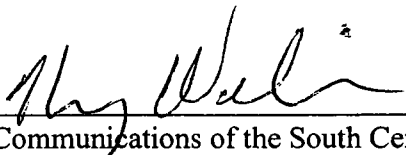


unenforceable clause, section or other provision had not been contained herein.



Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

June 11, 2004  
Date

  
AT&T Communications of the South Central  
States, LLC

By: Henry Walker, its Attorney in Fact

Henry Walker  
Print Name

June 10, 2004  
Date



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Henry Walker  
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T.R.A. DOCKET ROOM

July 12, 2004

Hon. Pat Miller, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Re: *Alleged Violations of Tenn. Code Ann. § 65-4-125(b) and Rules of  
Tennessee Regulatory Authority, Chapter 1220-4-2-.58, By: AT&T  
Communications of the South Central States, LLC*  
Docket No. 04-00172

Dear Chairman Miller:

The proposed "Settlement Agreement" dated June 10, 2004, and filed in the above-captioned docket should be amended as follows: On Page 2, in the third paragraph, the reference to Tenn. Code Ann. § 65-4-405(f) should be changed to Tenn. Code Ann. § 65-4-125(f).

Very truly yours,

Henry Walker, Counsel for AT&T  
Communications of the South Central  
States, LLC

Jean Stone, Counsel for TRA Staff

HW/pp

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7/12/2004

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EXHIBIT

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